IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 413 of 2007()

CRIME NO.58/07 OF KALADY POLICE STATION.

PETITIONER: ACCUSED

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1. ALEX, AGED 20 YEARS,
   S/O.FRANCIS, PULLIYADAN HOUSE,
   MANJAPRA P.O., KALADY.

2. ABILASH, AGED 18 YEARS,
   S/O.FRANCIS, PULLIYADAN HOUSE,
   MANJAPRA P.O., KALADY.

3. FRANCIS, AGED 41 YEARS,
   S/O.PAULOSE, PULLIYADAN HOUSE,
   MANJAPRA P.O., KALADY.

BY ADV. SMT.REKHA C.NAIR
SRI.N.C.MOHANAN
SRI.RAJESH VIJAYAN

RESPONDENTS: DEFACTO COMPLAINANT

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1. STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   REPRESENTING SUB INSPECTOR OF POLICE,
   KALADY.

2. DEPUTY SUPERINTENDENT OF POLICE,
   ALUVA.

BY P.P. SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 413 OF 2007

Dated this the 20th day of February, 2007

ORDER

The petitioners are accused and an F.I.R. has been registered against them, inter alia, under Sec.3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act') and Sec.324 read with Sec.34 of the IPC. Investigation is in progress. The petitioners have, in these circumstances, come to this Court with a prayer that the powers under Sec.482 of the Cr.P.C. may be invoked to quash the F.I.R. registered against them.

2. What are the reasons? Two reasons are urged. First of all, it is said that the F.I.R. does not specifically reveal that the complainant is a member of the Scheduled Caste or that the accused do not belong to any Scheduled Caste. Relying on the decision of the Bombay High Court in **Manohar M. Kulkarni v. State of Maharashtra** (2005 CRI.L.J. 4653), it is contended that when the First Information Statement is bereft of such vital details, the F.I.R. can be quashed.

3. Secondly and alternatively, it is contended that the parties have settled their disputes. The de facto complainant has not been arrayed as a party in this Crl.M.C. But it is submitted that an agreement has been entered into with the de facto complainant under which all the disputes have been settled amicably between the parties. Reliance was placed on the decision in **Karunakar Nayak v. State of Orissa** (2005 CRI.L.J. 4430) to contend that the powers under Sec.482 of the Cr.P.C. can be invoked to prematurely terminate the proceedings in a prosecution under Sec.3 of the Act.

4. I have carefully perused the averments in the First Information Statement. Of course, a specific statement that the victim/complainant does belong to the Scheduled Caste is not specifically made. But a total reading of the First Information Statement leaves no semblance of doubt that the crux of the allegation is that the complainant who belongs to the Scheduled Caste was assaulted and insulted by the petitioners. First Information Statement is not an encyclopedia. It is not to be reckoned as part of the pleadings of parties before courts. An F.I.R. is the natural and spontaneous reaction of a victim to a

crime committed against him. He is not a legal expert. He cannot, in a complaint given by him to the police with the intention of triggering the police to take action, be expected to narrate all the ingredients of the offences especially in complicated and technical offences committed. It is crucial to note that the petitioners have no contention that they do also belong to the Scheduled Caste. It is crucially relevant that the petitioners have no case that the complainant does not belong to any Scheduled Caste. In these circumstances, I am of opinion that it will be incorrect, improper and myopic to quash the F.I.R. for the short reason that the complainant has omitted to narrate all legal ingredients of the offence carefully in the complaint filed by him. Annexure-A1 – First Information Statement, it is crucial to note, was lodged by the victim who was undergoing treatment in the hospital. It is for the police officer to question him closely and bring out all the relevant details to justify the registration of the F.I.R. under the appropriate sections. If the police officer who recorded the First Information Statement has committed default in discharging that duty, that cannot, at any rate, persuade a court to invoke its extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. It may be the yard

stick which a court may employ when it considers averments in a complaint or the final report submitted by the police after investigation. At any rate, quashing of the F.I.R. for this reason may not be justified. If the decision of the Bombay High Court referred above were to be interpreted to mean that such inadequacy in the F.I.R. must in all cases invariably result in quashing of the F.I.R., I must respectfully disagree with such a dictum. The first contention cannot hence succeed.

5. The next contention raised is that composition of the offence is sufficient to invoke the powers under Sec.482 of the Cr.P.C. The decision of the Supreme Court in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386) lays down the proposition that powers under Sec.482 of the Cr.P.C. are to be invoked in the interests of justice and the provisions of Sec.320 of the Cr.P.C. do not fetter the sweep, width and amplitude of the inherent powers available to this Court under Sec.482 of the Cr.P.C. According to me, it would be incorrect to assume that the dictum in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386) has obliterated the distinction between compoundable and non-compoundable offences under Sec.320 of the Cr.P.C. and any composition of non-compoundable offences can ipso facto

lead to premature termination of proceedings. A Division Bench of this Court in **Thankamma v. State of Kerala** (2006 (3) KLT 846) has made that position very clear. The rationale underlying the decision in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386) is that the interests of justice may in a rare and peculiar case transcend the interests of mere law. That was a case where the settlement and composition of the matrimonial dispute/offence was reckoned by the Supreme Court to be a sufficient circumstance to invoke the powers under Sec.482 of the Cr.P.C. in aid of justice though Sec.320 of the Cr.P.C. would not authorise such a course.

6. Not so in this case. The offence under Sec.3 of the Act reflects the anxiety of the legislature to ensure the interests of the socially weak. That cannot be the subject matter of compromise and I am of opinion that quashing of proceedings on the basis of such composition of the non-compoundable offence under Sec.3(1)(x) of the Act cannot be achieved by invocation of the powers under Sec.482 of the Cr.P.C. The dictum in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386) does not permit quashing of all prosecutions of non-compoundable offence merely because parties have settled their disputes. The decision

in **Karunakar Nayak v. State of Orissa** (2005 CRI.L.J. 4430) does not lay down any such proposition, according to me. In the peculiar facts of the given case such course was followed by the Orissa High Court. It does not lay down that all such compositions can be accepted and proceedings quashed. There is no such peculiar circumstances in this case that can persuade this Court to accept the composition of a non-compoundable offence and terminate the proceedings prematurely. The legislation in its wisdom has not declared the offence under Sec.3 of the Act to be compoundable.

7. On the basis of the above discussions, I come to the conclusion that there are no circumstances justifying the invocation of the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. in the facts and circumstances of this case.

8. The learned counsel for the petitioners submits that the plight of the petitioners does also deserve sympathy. According to them, they are not guilty at all. The complainant has himself settled the dispute. The petitioners are likely to be arrested by the Investigating Officer, if the F.I.R. were not quashed. They cannot approach the superior court with an application for

anticipatory bail under Sec.438 of the Cr.P.C. in view of the bar under Sec.18 of the Act. The learned counsel prays that the petitioners may be granted an opportunity to surrender before the learned Magistrate and seek bail.

9. This Court has time and again observed that the mere fact that the offences under Sec.3 of the Act are triable exclusively by a court of session does not permit or authorise the Magistrate to abdicate his jurisdiction to consider the bail application on merits. Repeatedly, in the decisions reported in **Ali v. State of Kerala (**2000 (2) K.L.T. 280); **Shanu v. State of Kerala** (2000 (3) K.L.T. 452); **Krishnakumar v. State of Kerala** (2005 (1) K.L.D. (Cri) 42 and **P.P. Kader v. State of Kerala** (2005 (1) K.L.D. (Cri) 250) it has been held that the Magistrate is jurisdictionally competent to consider and grant the application for bail in an appropriate case even when the offence is one which is exclusively triable by a court of session. The petitioners shall be at liberty to surrender before the learned Magistrate on or before 28/2/2007. If they surrender before the learned Magistrate, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in

accordance with law and in the light of the decisions referred above expeditiously – on the date of surrender itself.

10. This Crl.M.C. is, in these circumstances, dismissed; but with the above observations.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge